No. 855

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

CONGRESS OF INDUSTRIAL ORGANIZATIONS, AN UNINCORPORATED ASSOCIATION, PHILIP MURRAY, INDIVIDUALLY AND AS PRESIDENT OF SAID CONGRESS OF INDUSTRIAL ORGANIZATIONS, ET AL.,

Petitioners,

vs.

ROBERT F. MCADORY, AS SOLICITOR OF JEFFERSON COUNTY, ALABAMA, AND HOLT MCDOWELL, AS SHERIFF OF JEFFERSON COUNTY, ALABAMA

PETITION FOR WRIT OF CERTIORARI

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To the Honorable the Justices of the Supreme Court of the United States:

The above-named petitioners respectfully petition for a write of certiorari to review a decision of the Supreme Court of the State of Alabama (R. 220) rendered on December 7, 1944. Such decision affirmed the decree of the Circuit Court of the Tenth Judicial Circuit of Alabama.

This case involves an action for a declaratory judgment pursuant to the Alabama Declaratory Judgment Statute, Title 7, Sections 156-168, Code of 1940, declaring unconstitutional the sections and subsections of the Act known as Senate Bill 341, Act. No. 298 of the Legislature of Alabama of 1943 (commonly referred to as the Bradford Act), regulating labor organizations and their members and for a permanent injunction restraining the Solicitor of Jefferson County, Alabama, Robert E. McAdory, and Holt McDowell, as Sheriff of Jefferson County, Alabama, and all persons acting under their authority and direction, from enforcing or attempting to enforce the aforesaid Act or any provisions thereof.

STATEMENT AS TO JURISDICTION

This case is one over which the Court has jurisdiction under the provisions of the Act of Congress of February 13, 1935, Section 237-b, 28 U.S.C.A., Section 344-b.

The validity of Sections 7 and 16 of the Bradford Act is questioned upon the ground that such sections on their face are repugnant to the Constitution of the United States and in particular to the Fourteenth Amendment and the First Amendment thereto as well as Article VI. The decision of the Alabama Supreme Court upheld the validity of the sections in question. The case was finally disposed of by the Supreme Court of the State of Alabama on December 7, 1944, when it entered its order affirming the determination of the Alabama Circuit Court. Every possible remedy within the State has been exhausted.

The complaint challenged each of the sections as being in violation of the Federal Constitution. Federal questions were briefed and argued before the State Supreme Court and that court passed upon the federal questions in affirming its prior opinion in the case of *Alabama State Federa-*

tion of Labor, et al v. *McAdory*, which is now before this Court on writ of certiorari, No. 588, this Term.

QUESTIONS PRESENTED

The following federal questions raised and argued before and passed upon by the Alabama Supreme Court are presented in this petition for certiorari and review:

1. Does Section 7 of the Bradford Act, requiring the filing by labor organizations of constitutions and by-laws and the annual filing of financial reports and other data concerning their internal functioning as well as the payment of a fee, as a precondition to the right to function in the State of Alabama, impose a previous general restraint upon the exercise by working people of their civil rights of assembly, speech and press in violation of the First and Fourteenth Amendments to the United States Constitution?

2. Does Section 16, forbidding executive, administrative, professional or supervisory employees from joining a labor, organization which admits other types of employees or is affiliated with an organization which does so, impose a previous general restraint on, or constitute a denial of, the exercise by working people of their civil rights of assembly and speech in violation of the First and Fourteenth Amendments to the United States Constitution?

3. Are Sections 7 and 16 discriminatory and violative of the equal protection of the laws clause of the Fourteenth Amendment?

4. Do Sections 7 and 16 of the Bradford Act deprive or deny petitioners and their members rights protected under the National Labor Relations Act in violation of Article VI of the United States Constitution?

5. Do Sections 7 and 16 constitute an improper burden on interstate commerce?

THE RELEVANT PROVISIONS OF THE STATUTE INVOLVED

Section 7. Every labor organization functioning in Alabama shall within sixty days after the effective date of this Act, and every labor organization hereafter desiring to function in Alabama shall, before doing so, file a copy of its constitution and its by-laws and a copy of the constitution and by-laws of the national or international union, if any, to which the labor organization belongs, with the Department of Labor, but this provision shall not be construed to require the filing of any ritual relating solely to the initiation or reception of members. All changes or amendments to the constitution or by-laws, local, national or international, adopted subsequent to their original filing must be filed with the Department of Labor within thirty days after the adoption thereof.

Every labor organization functioning in the State of Alabama and having twenty-five or more members in any calendar year shall annually on or before February first in the next succeeding calendar year file with every member of their respective labor organizations and with the Director of the Department of Labor a report in writing showing the facts hereinafter in this section provided as of the close of business on the thirty-first day of December next preceding the date of filing. Such report shall be filed by the secretary or business agent of such labor organization and shall show the following facts: (1) The name of the labor organization; (2) the location of its principal office and its offices in Alabama; (3) the name of the president, secretary, treasurer and other officers, and business agents, together with the salaries, wages, bonuses, and other remuneration paid each, and post office address of each; (4) the date of regular election of officers of such labor organization; (5) the number of its paid up members; (6) a complete financial statement of all fees, dues, fines, or assessments levied and or received, together with an itemized list of all disbursements, with names of recipients and purpose therefor, covering the preceding twelve (12) months;

(7) a complete statement of all property owned by the labor organization, including any monies on hand or accredited to such labor organization, which said report shall be duly verified by the oath of the president, secretary, or some other regularly selected and acting officer of such labor organization having knowledge of the facts therein stated. It shall be the duty of the Director of Labor to cause to be printed and to make available to the public forms for making such report. At the time of filing each such report it shall be the duty of every such labor organization to pay the Director of Labor an annual fee therefor in the sum of two dollars.

The Director of Labor shall receive, file and index the reports provided for in this section of this Act. The records provided for herein shall be public records and shall be made available by the Director of Labor in his office to the Governor of Alabama for examination.

It shall be unlawful for any fiscal or other officer or agent of any labor organization to collect or accept payment of any dues, fees, assessments, fines or any other monies from any members while such labor organization is in default with respect to filing the annual report required in this section.

* * *

Section 16. It shall be unlawful for any executive, administrative, professional, or supervisory employee to be a member in, or to be accepted for membership by, any labor organization, the constitution and by-laws of which permit membership to employees other than those in executive, administrative, professional, or supervisory capacities, or which is affiliated with any labor organization which permits membership to employees other than those in an executive, administrative, professional, or supervisory capacity. The provisions of this section shall not be construed so as to interfere with or void any insurance contract now in existence and in force.

* * *

Section 18. *Penalties:* If any labor organization violates any provision of this Act, it shall be penalized civilly in a sum not exceeding one thousand dollars ($1,000.00). for each such violation to be recovered as a penalty in the Circuit Court of the County in which the violation occurred, the action being brought in the name of the State of Alabama by the Circuit Solicitor of the Circuit in which the violation occurred, and it shall be the duty of the Circuit Solicitor of any Circuit in which any such violation occurs to institute and prosecute such action. The doing of any act forbidden or declared unlawful by the provisions of this Act, except where a penalty is specifically provided herein, or the commission of any offense herein declared to be a misdemeanor, shall constitute a misdemeanor, and shall be punishable by a fine not exceeding five hundred ($500.00), or by imprisonment at hard labor for not exceeding twelve months, or both.

* * *

ASSIGNMENT OF ERRORS

1. The Court below erred in holding that the Act as a whole is constitutional and valid.

2. The Court below erred in failing to hold that Sections 7 and 16 constituted an unconstitutional deprivation of the civil rights of petitioners and their members and in denying an injuncton against the enforcement of those sections.

3. The Court below erred in refusing to hold that Sections 7 and 16 constitute an improper burden on interstate commerce and conflict with the National Labor Relations Act, and in denying an injunction against the enforcement of those sections.

4. The Court below erred in refusing to hold that Section 7 denied to the petitioners the equal protection of the laws guaranteed by the Fourteenth Amendment of the United States Constitution.

STATEMENT OF FACTS

The petitioners, plaintiffs below, are the Congress of Industrial Organizations, the Alabama State Industrial Union Council, the United Steelworkers of America, the International Union of Mine, Mill and Smelter Workers, Textile Workers Union of America, all affiliated with the CIO, Local Unions 1015, 2971, 2382 affiliated with the United Steelworkers of America, all of whom are voluntary unincorporated associations, and Philip Murray, President of the CIO; Carey Haigler, Secretary of the Alabama State Industrial Union Council; David McDonald, Secretary-Treasurer of the United Steelworkers of America; Reid Robinson, President of the Mine, Mill and Smelter Workers; Emil Rieve, President of the Textile Workers; Hoyt Brant, President of Local Union No. 1015; William Nathan, President of Local Union No. 2971, and R. C. Scruggs, President of Local Union No. 2382.

The defendants are Robert E. McAdory, Solicitor of Jefferson County, Alabama, and Holt McDowell, Sheriff of Jefferson County, Alabama.

The action was brought by the plaintiffs below under the Alabama Declaratory Judgment Statute (Title 7, Sections 156-168, Code of 1940) to have declared unconstitutional various sections of the Bradford Act and to restrain the enforcement thereof by the two above-named defendants.

The Bradford Act in substance establishes a Department of Labor, sets up mediation machinery, seeks to license the functioning of labor organizations by requiring them to file various reports and financial statements and the payment of annual fees, regulates the internal affairs and activities of labor organizations, and various aspects of picketing, boycotting and striking. Violations of provisions of the Act result in both civil and criminal penalties (*supra*, p. 6).

Two sections of this Act are involved in this petition for certiorari—Section 7 and Section 16. The provisions thereof are set out, *supra*, pages 4, 5.

The facts in the record are substantially undisputed. They show that the petitioner associations and their members are engaged in a wide variety of organizing, educational, legislative, collective bargaining, civic and community activities and that these activities necessarily entail the use of methods of communication by word of mouth, press, radio, labor newspapers, as well as other traditional forms of communication. (R. 102, 84, 85, 86, 87, 103, 104, 105, 110, 151, 152).

The record further (R. 143) shows that 18,000 members of the United Steelworkers of America are engaged in work within the State of Alabama upon goods and materials moving in interstate commerce; that 32,000 members of CIO unions affiliated with the petitioners, Alabama State Industrial Union Council, are engaged in Jefferson County, Alabama, in performing work upon goods and materials moving in interstate commerce (R. 142, 143, 144).

The record shows, in addition, that it is the practice and policy of the CIO (R. 123, 124) to admit to membership in its various local unions all employees except those who do not have the right to hire and discharge. The complaint alleges (R. 21, 22, 23) that Sections 7 and 16 are unconstitutional and void because they impose previous general restraints and prohibitions upon the exercise by plaintiffs of their civil rights of free speech, press and assembly; that these sections are discriminatory as to the plaintiffs and violate the equal protection of the laws clause of the Fourteenth Amendment; that they violate Article VI of the United States Constitution.

The plainiffs' interest in the proceeding, their standing to raise the constitutional issues, the manner in which

labor organizations function and operate, and the manner in which plaintiffs were agrieved by reason of the threatened enforcement of the various sections of the Act challenged as unconstitutional, appear in the record (R. 84, 85, 86, 87, 102, 103, 104, 105, 110, 151, 152, 158, 160, 176, 183).

The Circuit Court (R. 202) held that the Act as a whole was constitutional and valid; that sections 12 and 17 were unconstitutional; that so much of Section 13 as prevents a strike except by majority vote was unconstitutional; that so much of the provisions of Section 14 intended to make more effective that part of Section 13 respecting unlawful strikes was unconstitutional. The Supreme Court of the State of Alabama affirmed the determination of the Circuit Court.

Sections 7 and 16 of the Bradford Act are the only sections challenged by petitioners which the Alabama Supreme Court held constitutional, and, as before stated, are the only sections involved in this Petition for Certiorari and Review.

REASONS RELIED ON FOR ALLOWANCE OF WRIT

This Court in *Alabama State Federation of Labor, et al.* v. *McAdory, et al.*, No. 588, granted a writ of certiorari in behalf of the petitioners, Alabama State Federation of Labor, et al.

Your petitioners urge as the reasons for granting this writ the same grounds as were presented by petitioners in that case so far as they relate to the unconstitutionality of Sections 7 and 16.

ARGUMENT

POINT I

THE PROVISIONS OF THE STATUTE REQUIRING LABOR UNIONS OPERATING IN THE STATE OF

ALABAMA TO FILE THEIR CONSTITUTIONS AND BY-LAWS AND THE ANNUAL FILING OF FINANCIAL REPORTS AND OTHER DATA CONCERNING THEIR INTERNAL FUNCTIONING VIOLATES THE CONSTITUTION OF THE UNITED STATES IN THAT IT DENIES THE RIGHTS OF FREE SPEECH, PRESS AND ASSEMBLY GUARANTEED BY THE FIRST AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION.

Stated summarily, it is the thesis of the petitioners that, because of his economic impotence, when measured against the economic power of his employer and combinations of employers, the right of the individual workingman to bargain, standing alone, is void of content; that only by acting jointly with others can he make his right as an individual meaningful; that in associating with others to form a labor organization, he sets up an institution which becomes and remains a living institution only by means of, only by exercising and using the constitutional guarantees of free speech, press and assembly; that the unfettered and unrestricted use of, and freedom to enjoy, these guarantees comprise the vitalizing anatomy of a labor organization, and that the statutory limitations upon their use unconstitutionally interfere with the exercise of these guarantees.

The arguments and authorities supporting this view have already been addressed to the Court in No. 588. We adopt them for purposes of this petition. We point out further that additional support for the view contended for is contained in the recent decision of this Court in *Thomas* v. *Collins*, No. 14, this Term. Also, the Supreme Court of Colorado in *American Federation of Labor* v. *Reilly*, decided December 21, 1944, unreported (15 L.R.R. 556), held that the functioning of a labor organization embodies the exercise of civil rights.

POINT II

SECTION 16 PROHIBITING EXECUTIVE, ADMINISTRATIVE, PROFESSIONAL AND SUPERVISORY EMPLOYEES FROM JOINING ORGANIZATIONS WITH THEIR FELLOW EMPLOYEES IS A DENIAL OF THE CONSTITUTIONAL RIGHTS OF THESE GROUPS AS WELL AS OF THEIR FELLOW UNION MEMBERS.

Under the terms of Section 16, it is made criminal, for example, for an engineer or a chemist employed in an industrial concern to join a labor organization together with the other production employees. It is thus made a crime for him to undertake to advance his own welfare and viewpoint by utilizing a large and strong organization of his fellow employees as a means of expressing and protecting himself. By virtue of the same criminal prohibition his fellow employees are denied the opportunity to join the engineer or the chemist in pooling their economic resources, in utilizing their common views and abilities for the formulation and dissemination of their ideas and for their mutual protection.

It is patent that, without any warrant in the facts, the State of Alabama has unconstitutionally chosen to place an absolute prohibition on the right of both groups to enjoy together and separately the rights of free speech, press and assembly. There is nothing in the record which shows that a clear and present danger has existed in the past or may arise in the future from the joint assemblage of administrative, executive and supervisory employees with other workers.

The effect and the purpose of this section is apparent. It is to weaken the bargaining power of a union by limiting the scope of its membership. In doing so it prevents the exchange of opinion through the medium of the exer-

cise of the rights of free speech, press and assembly by and between the two groups. *Thomas* v. *Collins*, No. 14, this term.

POINT III

SECTIONS 7 AND 16 IMPROPERLY BURDEN INTERSTATE COMMERCE AND CONFLICT WITH THE NATIONAL LABOR RELATIONS ACT AND ARE THEREFORE INVALID BECAUSE THEY VIOLATE ARTICLE VI OF THE UNITED STATES CONSTITUTION.

Section 7 of the Bradford Act conditions the functioning of labor organizations in the state upon a licensing requirement. But your petitioners are interstate entities whose normal activities involve extensive interstate functioning. Bargaining itself, the characteristic activity of labor organization is today an interstate activity. Cf. *Thornhill* v. *Alabama*, 310 U. S. 88. To the extent that Section 7 licenses the local functioning of petitioners, we believe that it improperly burdens interstate commerce and is condemned by *International Textbook Co.* v. *Pigg*, 217 U. S. 106.

Moreover, under the conditions created by modern industry, collective bargaining is not a matter admitting of diversity of treatment, according to the special requirements of local conditions. Section 16 of the Bradford Act, which denies administrative, executive, professional and supervisory employees representation through unions of production workers would destroy bargaining patterns which are national in scope. The stability which uniformity in bargaining terms necessarily produces would be threatened, and the interstate activities not only of unions but of the employers with whom they bargain subject to disruption, if local regulations of the type here involved were permitted to stand. The record shows (R. 77, 79, 82, 83,

87) that petitioning labor organizations in their bargaining relationships lay down terms and conditions of employment for broad interstate areas. But contracts which such bargaining produces would be denied local effect in those circumstances in which petitioners or their members failed to comply with Section 7 and 16.

This balkanization of the bargaining process would seem to be condemned by the commerce clause. Congress has expressly stated in the National Labor Relations Act that the promotion of collective bargaining and of self-organization is a Federal concern. This Court, in *N.L.R.B.* v. *Hearst Publications*, 64 S. Ct. 851, 857, has stated with respect to that Act:

> "Both the terms and the purposes of the statute, as well as the legislative history, show that Congress had in mind no such patch-work plan for securing freedom of employees' organizations and of collective bargaining. The Wagner Act is federal legislation, administered by a national agency, intended to solve a national problem on a national scale. Cf., e.g., Sen. Rept. No. 573, 74th Cong., 1st Sess., pp. 2-4.

See also, *Federal Trade Commission* v. *Bunte Bros.*, 312 U. S. 349.

The direct conflict between the Bradford Act and the National Labor Relations Act is patent. Unions cannot offer themselves as bargaining representatives for purposes of the Federal Act unless they satisfy the terms of Section 7 of the Bradford Act. An Alabama employer is provided with defenses to a refusal to bargain which in effect totally recast the scope of the bargaining obligation under Section 8(5) of the National Labor Relations Act. Moreover, Congress has declared that "any employee" may have a representative of his own choosing. But the Alabama legislature has made it criminal for certain classes of employees to join particular unions. The delicate and diffi-

cult problems of supervisory employees which the National Board has made the subject of a series of tentative adjustments are now cast into a rigid local solution. See, for example, National Labor Relations Board, *Eighth Annual Report* (1943), pp. 55-56, and compare Matter of Soss Mfg. Co., 56 N.L.R.B. No. 70.

In thus restricting the scope of the National Labor Relations Act, the Alabama legislature has in effect neutralized the express judgment of Congress as to the most effective means of protecting interstate commerce from disturbance.

POINT IV

THE REQUIREMENT THAT LABOR UNIONS FILE THEIR CONSTITUTION AND BY-LAWS AS A PRECONDITION TO THEIR FUNCTIONING IN THE STATE OF ALABAMA DENIES TO THE COMPLAINANTS AND THEIR MEMBERS THE EQUAL PROTECTION OF LAW GUARANTEED BY SECTION 1 OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

Section 2(a) of the Alabama Act excludes from its operation labor organizations whose members are subject to the Railway Labor Act. This distinction between such a group and all other labor organizations is one which nowhere in the record is supported by any justification. Differentiated treatment among groups subject to the mandate of a statute can escape the stigma of unconstitutionality only by clear and factually founded justification for the discrimination. No such difference exists which justifies or warrants in any way the exclusion of unions whose members are subject to the Railway Labor Act. Both the Railway Labor Act and the National Labor Relations Act protect the rights of employees to bargain collectively and both condemn interference with those rights. They have

the same general purpose. Moreover, they are both designed to protect interstate commerce from disturbance. The distinction made by the Alabama statute is arbitrary and capricious.

Equally insupportable is another distinction created by an omission from the Alabama statute. While labor organizations are required to file copies of their constitutions and by-laws, employers' associations are not. This despite the fact that the latter groups have enlarged the scope of their activities to reach a large variety of endeavor and to achieve control over the economic aspect of the lives of a vast segment of the working population of the United States. To permit freedom from this requirement to employers' associations while subjecting unions to the compulsion of it, is a discriminatory differentiation in the treatment of two groups. *Hartford Company* v. *Harrison*, 301 U. S. 459, *Bethlehem Motors Company* v. *Flint*, 256 U. S. 421, *Connolly* v. *Union Sewer Pipe Company*, 184 U. S. 450.

As this Court stated in *Frost* v. *Corporation Commission*, 278 U. S. 515:

> "* * * Mere difference is not enough; the attempted classification must always rest upon some difference which bears a reasonable and just relation to the act with respect to which the classification is proposed, and can never be made arbitrarily and without such 'basis'."

Finally, it should be noted that no other type of non-profit voluntary association must comply with Section 7 of the Alabama statute.

A casual reading of the statute makes plain beyond dispute that its principal objective is to single out labor organizations for the imposition of the constrictive requirements, at variance with the constitutional guarantees of equal protection of the law.

CONCLUSION

IT IS RESPECTFULLY SUBMITTED THAT PETITIONERS HAVE BEEN DENIED AND DEPRIVED OF THE RIGHTS GRANTED AND SECURED UNDER THE CONSTITUTION OF THE UNITED STATES, AND THAT THE DECISION OF THE ALABAMA SUPREME COURT SHOULD BE REVERSED.

WHEREFORE, your petitioners pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Clerk of the Supreme Court of Alabama, commanding that Court to certify and send to this Court for review and determination, on a day certain to be named therein, a full and complete transcript of the record and all proceedings in the case No. 6 Div. 294, entitled "Congress of Industrial Organizations, an unincorporated association, et al., v. Robert E. McAdory, as Solicitor of Jefferson County, Alabama, et al.", and that the judgment of the Supreme Court of Alabama may be reviewed by this Honorable Court, and that upon the granting of the petition for certiorari this case may be set down for argument at the same time as No. 588, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem just and meet; and your petitioners will ever pray.

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